

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

ROBERT J. & JOAN K. RYAN,)	
)	DOCKET NO.: PT-1997-131
Appellant,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal came on regularly for hearing on the 20th day of August, 1998, in the City of Kalispell, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law. The taxpayer, represented by Robert J. Ryan, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by appraisers Betty McDavid and Verna M. Day, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received and the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and

place of said hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

Improvements only on Lot 64, Country View Estates, Flathead County, Montana.

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$36,168 for the land and \$152,832 for the improvements.

4. The taxpayer appealed to the Flathead County Tax Appeal Board requesting a reduction in value to \$135,000 for the improvements.

5. The County Board denied the appeal.

6. The taxpayer then appealed that decision to this Board.

TAXPAYERS' CONTENTIONS

Mr. Ryan described the events of assessment of his house since 1994 as a "comedy of errors". When he received his first assessment notice he discovered that his home was appraised as having 2,800 square feet. He called this to the attention of the local appraisal office who told him that it was an error and it was really "the house up the street". The house was then reappraised at \$139,000. Mr. Ryan stated that the appraisal stayed at that amount for three years. He then

received a comparison of his house to a house at Lake Blaine and another house in "Hidden Valley", both of which are seven to fifteen miles away from his house.

The taxpayer presented exhibit 1, a map showing the location of his property, a copy of the front of the property record card, and a copy of the Montana Comparable Sales sheet for his property. He presented exhibit 2 which is a handwritten copy of the appraised value of a house behind the subject that belongs to the "sister of the developer" and indicates a value of \$155,400. Exhibit 2 also contains a copy of a real estate advertisement for a house at 172 Arbour Drive which is appraised by the DOR at \$131,300 with an asking price of \$141,900. A third page to exhibit 2 is another copy of a real estate advertisement indicating a house at 168 Trail ridge that is appraised by the DOR at \$152,100, with an asking price in the advertisement of \$169,900. Mr. Ryan inquired as to why these properties would be appraised by the DOR at so much less than his house. He believes that there has been a discrepancy in the appraisal of his house over the past four years of \$60,000.

The taxpayer stated that he purchased the house directly from the builder for \$150,000 in October of 1993. He believes that it is now worth \$170,000 to \$175,000. Mr. Ryan testified that he calculated a "modest 4% per year, not the 10%

the county is saying it increased in value." He stated that the tax remained basically the same from 1996 to 1997 even though the value increased by \$60,000. It is his opinion that the value was "bumped up" to create an eventual increase in tax revenue.

DOR'S CONTENTIONS

The DOR explained to the Board how the subject property has been appraised. The DOR introduced exhibit A which contains a copy of the property record card for the subject, a copy of the Montana Cost Comparable sheet for the house, and maps providing the location of the subject and of those properties selected as comparable to the subject. Exhibit B is photographs of the subject property. Photographs of the comparable properties found on exhibit A were presented as exhibit C. Exhibit D is a copy of the values currently on the subject property and the value before the 1997 reappraisal submitted by the DOR to illustrate the phase-in of value in accordance with SB-195.

Ms. McDavid testified that in response to the filing of the Form AB-26 by the taxpayer, the DOR reviewed the home and reduced the rating factor for Condition, Desirability, and Utility (CDU) from good to average. That action resulted in a reduction of the original appraised value to the current \$189,000.

The 2,055 square foot home is quality graded by the DOR as a 6. The characteristics of the home have been reviewed and are believed to be accurate as depicted on the property record card. Ms. McDavid stated that DOR comparables number one, two, and three found on the Montana Cost Comparable sheet are in the same subdivision as the subject. Comparables four and five are admittedly outliers according to Ms. McDavid. The property in the Hidden Valley subdivision (comp four) is farther North and the property from the Lake Blaine area (comp five) is not a water front influenced property. She stated that there has been good sales activity in the subdivision in which the subject is located. The DOR compiled thirteen sales in 1995, in 1996 sixteen sales, in 1997 ten sales, and through June of 1998 there had been seven sales in this subdivision. She stated that the actual transaction numbers have remained steady even though the time the property is exposed to the market has been extended.

Ms. McDavid stated that from the purchase date by the taxpayer and the initial appraisal which was based upon data from the previous appraisal cycle, there have been increases not only in the market, but in the costs used to establish value. Those increases have not occurred in one year, but over what is now the second appraisal cycle change brought about by a four year period. The initial value was determined using

sales history prior to 1993, and the current values are based on data from each year since 1994 through January 1, 1996 and then applied to property in 1997.

BOARD'S DISCUSSION

The Board explained to Mr. Ryan the phase-in provisions of the 1997 legislation identified as SB-195 to answer his question why, even though the value went up from the previous appraisal cycle, he had not seen an increase in taxes.

The time period for property appraisal cycles in Montana was also explained to Mr. Ryan at the hearing before this Board to answer his question concerning an increase in value that he had believed to be a one year increase.

The subject property has been appraised by the DOR using the market approach to value. Exhibit A also contains a presentation of the value of the property based on the cost approach to value which is \$213,388, a figure that is substantially higher than the market approach adopted by the DOR. The first three sales of property and presented as comparable to the subject are within the same subdivision as the subject, and the market modeling recognizes that comparables four and five are from outside of the area and not from the same neighborhood through adjustment for that difference.

It is true, as a general rule, that the appraisal of

the Department of Revenue appraisal is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)). This Board finds that the evidence presented by the Department of Revenue did support the values assessed and this appeal shall be denied.

CONCLUSIONS OF LAW

1. **15-8-111. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

2. State ex rel. Schoonover v. Stewart, 89 Mont 257, 297 Pac. 476.

. . And in no proceeding is one to be heard who complains of a valuation which, however erroneous it may be, charges him only with a just proportion of the tax. If his own assessment is not out of proportion, as compared with the valuations generally on the same roll, it is immaterial that some one neighbor is assessed too little; and another too much. (Emphasis supplied.)

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be

entered on the tax rolls of Flathead County by the assessor of that county at the 1997 tax year value of \$152,832 for the improvements as determined by the Department of Revenue, and the decision of the Flathead County Tax Appeal Board is affirmed.

Dated this 4th of December, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

PATRICK E. MCKELVEY, Chairman

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.